APPEAL NO. 010552

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 1, 2001. The hearing officer gave presumptive weight to the report of the designated doctor (DD) on the disputed issues of maximum medical improvement (MMI) date and impairment rating (IR). The appellant (claimant) has appealed the MMI date and IR, taking the position that the DD has not provided a definitive statement of MMI, and requesting that the DD answer further questions about his certification of MMI and IR, or that another DD be selected. The respondent (carrier) has filed a response, urging that the hearing officer be affirmed.

DECISION

Affirmed.

We first note two errors made by the hearing officer. The errors do not affect the result of this case. The hearing officer stated that no witnesses were called in the case, when, in fact, the claimant testified under oath at the CCH. He also stated that the "claimant is claiming a compensable injury to her right shoulder, right knee and right ankle," when, in fact, the compensable injuries were to the left shoulder, left knee and left ankle.

The hearing officer did not err in finding that the report of the DD, Dr. D, was not contrary to the great weight of the other medical evidence. The claimant's first treating doctor, Dr. T, assigned an MMI date of January 7, 2000, and an IR of 0%. The claimant disputed the MMI date and IR. The DD was appointed and certified the MMI date as April 24, 2000, with an IR of 3%. The claimant also disputes this MMI date and IR, taking the position that she was in the midst of a full-time treatment program and it was therefore inappropriate to deem her to be at MMI at the time. After completion of the treatment program, her second treating doctor, Dr. M, certified an MMI date of June 20, 2000, with an IR of 14%. The claimant believes this MMI date and IR to be correct. After Dr. M's certification of MMI and IR was submitted, the DD was asked to review the case again and advise the Texas Workers' Compensation Commission (Commission) whether his opinion remained the same or changed. The DD made no change to the MMI or the IR after this review.

The report of a Commission-appointed DD is given presumptive weight. Sections 408.122(c) and 408.125(e). A certification of MMI and IR by a DD will be accepted unless the great weight of the other medical evidence is to the contrary. In this case, the hearing officer could find that the other medical evidence did not overcome the presumption afforded to the DD's report. Pursuant to Section 410.165(a) of the 1989 Act, the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer resolves the conflicts and inconsistencies in the evidence and determines what facts have been established from the conflicting evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); St. Paul

Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). This tribunal will not upset the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not find them so here.

For these reasons, we affirm the hearing officer's decision and order.

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge